IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5471 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S ALEMBIC CHEMICALS WORKS COMPANY LIMITED

Versus

UNION OF INDIA, THROUGH SECRETARY

Appearance:

1. Special Civil Application No. 5471 of 1987

MR RAKESH GUPTA for M/S TRIVEDI & GUPTA for Petitioner No. 1-2

MR DHAVAL NANAVATY ADDL. CENTRAL GOVERNMENT STANDING COUNSEL for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What had given rise to this petition under Article 227 of the Constitution were the letters from the Superintendent of Central Excise & Customs, Range-I, Division-III, Baroda to the petitioner-Company issued between 2nd July and 6th October, 1987 (Annexures "A" to "E" to the petition) requiring the petitioners to pay appropriate central excise duty on prepared culture media manufactured by the petitioner and also requiring the petitioner-Company to furnish certain details regarding production, clearance and value thereof. The petitioners prayed for a declaration that the intermediate products coming into existence during the course of manufacture of antibiotics in the petitioners' factory are not "goods" within the meaning of the said term as given under Section 2(d) of the Central Excise Act, 1944 and that the intermediate products are not excisable. The petitioners have also prayed for consequential reliefs.

2. This Court had initially issued notice to the respondents on 13th October 1987. Thereafter by order dated 1st May 1989 the petition was admitted and ad-interim relief was granted to restrain the respondents from compelling the petitioners to follow the excise procedure and from recovering excise duty on the intermediate products that come into existence during the course of manufacture of antibiotics in the petitioners' factory. The ad-interim relief was, however, granted subject to the petitioners giving security for the amount of excise duty claimed by the respondents.

3. When this petition has reached final hearing today, Mr Rakesh Gupta, learned counsel for the petitioner-Company states that during pendency of the petition, the Superintendent of the Central Excise, Range-I, Division-III, Baroda had issued show cause notices dated 26th November 1987, 28th March 1988 and 21st April 1989 on the same subject matter. However, on account of the ad-interim stay granted by this Court, the respondent-authorities have not proceeded with the hearing of the said show cause notices.

The learned counsel for the petitioners further states that in the intervening period, similar controversy has been decided by different Benches of the Customs Excise & (Gold) Control Appellate Tribunal at Chennai and Mumbai taking the view that prepared culture media are susceptible to contamination and are, therefore, not marketable goods. The learned counsel states that the petitioner-Company would raise the necessary defences before the authorities at the hearing

of the show cause notices.

The learned counsel, therefore, seeks leave to withdraw this petition without prejudice to the rights and contentions of the petitioner-Company raised in this petition.

4. Since the petition is directed against the tentative view which was taken by the department way back in the year 1987 and the matter has not proceeded beyond the stage of show cause notices, and since the learned counsel for the petitioners states that the petitioner-Company is ready to go before the authorities for raising its defences on merits, this petition is disposed of as not pressed.

However, while making it clear that we have not gone into the merits of the controversy which is the subject matter of this petition, but at the same time, since pursuant to the ad-interim relief granted earlier, the petitioner-Company has been giving the bank guarantees for the amounts of excise duty demanded by the respondent-authorities, it will be in the fitness of things to direct, and it is directed accordingly, that the petitioner-Company shall continue the bank guarantees for a period of six months from today during which period the respondent-authorities shall hear the petitioners and finally decide the matter with utmost expedition and in any case within four months from today. The respondents shall permit the petitioners to file their written reply, if not already filed, within one month from today.

5. The petition is accordingly disposed of as not pressed, but subject to the aforesaid directions regarding continuation of the bank guarantees and the direction to the respondent-authorities to decide the matter expeditiously in any case within four months from today.

Rule is discharged with no order as to costs.

(M.S. SHAH, J.) (M.C. PATEL, J.)

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